



Regional Investment Corporation (Drought Loans Expansion) Rule 2020

We, David Littleproud, Minister for Agriculture, Drought and Emergency Management, and Mathias Cormann, Minister for Finance, make the following rule.

Dated 23rd March 2020

David Littleproud
Minister for Agriculture, Drought and
Emergency Management

Mathias Cormann
Minister for Finance

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 What is an <i>eligible farm business</i> ?	2
Part 2—Drought Loans Expansion Program	3
Division 1—Prescribing Drought Loans Expansion Program	3
6 Drought Loans Expansion Program prescribed.....	3
7 Constitutional basis for program.....	3
Division 2—Dealing with applications for expanded drought loans	4
8 Loan application must meet certain criteria	4
9 Informing applicants of outcome of applications.....	4
Division 3—Making expanded drought loans	5
10 Expanded drought loan not to be made where farm business loan available	5
11 Purpose criteria—connection with drought.....	5
12 Capacity to repay loan and provide security	5
13 Financial criteria	6
14 Business activities and ownership criteria.....	6
Division 4—Determining terms and conditions of expanded drought loans	8
15 Maximum amount of expanded drought loans.....	8
16 Extra terms and conditions of expanded drought loans.....	8
17 Setting interest rates.....	8
Division 5—Collecting and dealing with payments and enforcing security	9
18 Corporation to pay amounts collected to Commonwealth	9
19 Decisions on foreclosure should be made by Board	9
Division 6—Dealing with debt relating to expanded drought loans	10
20 Mediation.....	10
21 Waiver	10
Division 7—Reporting to responsible Ministers	11
22 Quarterly reporting	11
Division 8—Funding of expanded drought loans	12
23 Funding of expanded drought loans	12
Division 9—Other matters relating to program	13
24 Charging of transaction costs.....	13
25 Directions by responsible Ministers.....	13
Part 3—Other functions relating to program	14
Division 1—Corporation functions	14
26 Preparing and publishing guidelines relating to program.....	14
27 Providing information and advice to responsible Ministers.....	14
Division 2—Board functions	15
28 Ensuring internal review of decisions about loans	15
29 Setting interest rates.....	15
30 Developing and applying loan management policies and procedures.....	15

Part 1—Preliminary

1 Name

This instrument is the *Regional Investment Corporation (Drought Loans Expansion) Rule 2020*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *Regional Investment Corporation Act 2018*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Board;
- (b) constitutional corporation;
- (c) constitutional trade or commerce;
- (d) Corporation;
- (e) Desertification Convention;
- (f) responsible Ministers;
- (g) farm business loan.

In this instrument:

Act means the *Regional Investment Corporation Act 2018*.

affected area has the same meaning as in the Desertification Convention.

Climate Change Conventions means:

- (a) the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992; and
- (b) the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997; and
- (c) the Paris Agreement, done at Paris on 12 December 2015.

Note: The Convention, the Protocol and the Agreement are in Australian Treaty Series 1994 No. 2 ([1994] ATS 2), 2008 No. 2 ([2008] ATS 2) and 2016 No. 24 ([2016] ATS 24), respectively. In 2020, they could be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

commercial debt means debt established on commercial terms, at commercial interest rates.

eligible farm business has the meaning given by section 5.

expanded drought loan means a loan by the Corporation to an eligible farm business, on terms and conditions that include the following:

- (a) the term of the loan is 10 years;

Section 5

- (b) for the first 2 of those years:
 - (i) the loan is interest-free; and
 - (ii) no repayment of the principal is required;
- (c) only interest is payable for the third, fourth and fifth years of the loan;
- (d) the business must pay interest and repay the principal over the final 5 years of the loan;
- (e) the principal of the loan may be repaid (wholly or partly) at any time during the term of the loan without penalty;
- (f) all outstanding amounts must be repaid at the end of the term of the loan.

program means the Expanded Drought Loans Program prescribed by section 6.

5 What is an *eligible farm business*?

An *eligible farm business* is a farm business that:

- (a) is not located in an affected area; and
- (b) is not located in a Territory; and
- (c) is not solely or mainly engaged in producing commodities for constitutional trade or commerce; and
- (d) is not a constitutional corporation.

Part 2—Drought Loans Expansion Program

Division 1—Prescribing Drought Loans Expansion Program

6 Drought Loans Expansion Program prescribed

- (1) For the purposes of paragraph 8(1)(g) of the Act, this section prescribes the Drought Loans Expansion Program.
- (2) The Drought Loans Expansion Program is the program that:
 - (a) consists of the following activities:
 - (i) receiving applications for expanded drought loans, and dealing with the applications in accordance with Division 2;
 - (ii) making expanded drought loans in accordance with Division 3;
 - (iii) determining, in accordance with Division 4, the terms and conditions on which expanded drought loans are made;
 - (iv) taking security for expanded drought loans;
 - (v) charging borrowers for transaction costs incurred by the Corporation in relation to expanded drought loans;
 - (vi) collecting and dealing with payments of interest on, and repayments of principal of, expanded drought loans, and if required, enforcing security taken for such loans, in accordance with Division 5;
 - (vii) seeking, where the Corporation considers it appropriate, to recover any costs the Corporation incurs in taking action to enforce a loan agreement;
 - (viii) periodically reviewing expanded drought loans and the terms and conditions on which they are made;
 - (ix) dealing with debts relating to expanded drought loans in accordance with Division 6;
 - (x) reporting to the responsible Ministers on expanded drought loans in accordance with Division 7; and
 - (b) relates to expanded drought loans funded in accordance with Division 8.

7 Constitutional basis for program

The constitutional basis for the program is paragraph 51(xxix) of the Constitution, so far as it provides a basis for implementing Australia's international obligations under the following:

- (a) the Desertification Convention;
- (b) one or more of the Climate Change Conventions.

Division 2—Dealing with applications for expanded drought loans

8 Loan application must meet certain criteria

- (1) To obtain an expanded drought loan, an eligible farm business must make an application to the Corporation.
- (2) To be valid, the application must:
 - (a) be in writing; and
 - (b) include the information (if any) required by the Corporation; and
 - (c) be accompanied by the documents (if any) required by the Corporation.
- (3) The Corporation is not required to consider an application that is not valid.

9 Informing applicants of outcome of applications

The Corporation must ensure that an applicant for an expanded drought loan is informed of the outcome of their loan application as soon as practicable after a decision on the application has been made.

Division 3—Making expanded drought loans

10 Expanded drought loan not to be made where farm business loan available

The Corporation must not make an expanded drought loan to an eligible farm business where the business would be eligible to receive a farm business loan.

11 Purpose criteria—connection with drought

- (1) The Corporation must not make an expanded drought loan to an eligible farm business unless the loan will assist the business to:
 - (a) engage in drought preparedness activities; or
 - (b) manage or recover from the effects of drought by doing one or more of the following:
 - (i) restructuring its existing debt;
 - (ii) meeting its operating expenses;
 - (iii) enhancing its productivity.
- (2) The Corporation must not make an expanded drought loan to an eligible farm business unless:
 - (a) where the business intends to use the loan funds for the purpose mentioned in paragraph (1)(a)—the business is in financial need of assistance due to an event outside of its control; or
 - (b) where the business intends to use the loan funds for the purpose mentioned in paragraph (1)(b)—the business is in financial need of assistance as a consequence of drought.
- (3) The Corporation must not make an expanded drought loan to an eligible farm business unless the business has a drought management plan that:
 - (a) outlines the activities that the businesses proposes to spend the loan funds on; and
 - (b) sets out the business’s drought preparedness, management and recovery strategies.

12 Capacity to repay loan and provide security

- (1) The Corporation must not make an expanded drought loan to an eligible farm business unless:
 - (a) the Corporation is satisfied that the business has the capacity to repay the loan; and
 - (b) the business provides sufficient security for the loan.

Types of security the Corporation must consider

- (2) For the purposes of paragraph (1)(b), the Corporation must consider requiring security in the form of:
 - (a) a registered mortgage over land; or
 - (b) a registered mortgage over livestock; or
 - (c) a registered security interest in water rights.

Section 13

Note: The program guidelines published under section 26 will set out other kinds of securities that the Corporation will consider and require in relation to expanded drought loans.

13 Financial criteria

The Corporation must not make an expanded drought loan to an eligible farm business unless:

- (a) the Corporation is satisfied that the business is financially viable, or has sound prospects of a return to financial viability within 10 years; and
- (b) the business:
 - (i) owes commercial debt; and
 - (ii) has the support of the commercial lender to the proposed concessional loan; and
- (c) the entity carrying on the business is not bankrupt or under external administration; and
- (d) the entity carrying on the business is registered for tax purposes in Australia with an Australian Business Number, and is registered under the *A New Tax System (Goods and Services Tax) Act 1999*.

14 Business activities and ownership criteria

- (1) The Corporation must not make an expanded drought loan to an eligible farm business unless:
 - (a) all primary production aspects of the business are undertaken wholly within Australia; and
 - (b) the business is carried on by:
 - (i) a sole trader covered by subsections (2) and (3); or
 - (ii) a partnership whose partners include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same partner or different partners); or
 - (iii) a trust whose beneficiaries or unit-holders include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same beneficiary or unit-holder or different ones); or
 - (iv) a corporation (within the meaning of the *Corporations Act 2001*), other than:
 - (A) a public company (within the meaning of that Act); or
 - (B) a constitutional corporation;
whose members include a person covered by subsection (2) and a person covered by subsection (3) (whether those subsections cover the same member or different members).
 - Note: Constitutional corporations are excluded from subparagraph 14(1)(b)(iv) because such corporations are not eligible for loans under the program – see paragraph 5(d).
 - (2) This subsection covers a person who is an Australian citizen or permanent resident.
 - (3) This subsection covers a person:
 - (a) who has experience in operating a farm business; and
 - (b) whose principal business pursuit is the eligible farm business.
-

- (4) An eligible farm business is a person's principal business pursuit where the person devotes the majority of their labour to, and derives the majority of their income from, the business.

Division 4—Determining terms and conditions of expanded drought loans

15 Maximum amount of expanded drought loans

- (1) The Corporation must not grant a loan that exceeds the maximum loan amount.
- (2) The maximum loan amount, for an eligible farm business, is the lesser of the following:
 - (a) an amount that would result in the business holding 50% of its total debt in Commonwealth-funded concessional loans;
 - (b) \$2 million.
- (3) The total debt of an eligible farm business is the sum of:
 - (a) the business's commercial debt; and
 - (b) the amount owing under each Commonwealth-funded concessional loan provided to the business.

Note: The program guidelines published under section 26 must deal with the kind of loans that the Corporation considers to be Commonwealth-funded concessional loans.

16 Extra terms and conditions of expanded drought loans

The Corporation may determine the terms and conditions on which an expanded drought loan is made.

Note: The loan must be subject to the terms and conditions mentioned in the definition of *expanded drought loan* in section 4.

17 Setting interest rates

The Corporation must determine the interest rates on all expanded drought loans in accordance with the agreed methodology described in section 29.

Note: The first 2 years of each expanded drought loan are interest-free.

Division 5—Collecting and dealing with payments and enforcing security

18 Corporation to pay amounts collected to Commonwealth

The Corporation must pay the Commonwealth, as soon as reasonably practicable, all loan repayments received by the Corporation from recipients of expanded drought loans (including principal repayments and payments of interest, but excluding payments of any transaction costs the Corporation charged the recipients in relation to the loans).

19 Decisions on foreclosure should be made by Board

A decision of the Corporation as to whether or not to foreclose on an expanded drought loan should be made by the Board (not a delegate of the Corporation or the Board).

Division 6—Dealing with debt relating to expanded drought loans

20 Mediation

The Corporation must offer to undertake mediation in respect of debts relating to expanded drought loans, and, if the offer is accepted, undertake the mediation.

21 Waiver

A decision of the Corporation to waive a debt relating to an expanded drought loan:

- (a) should be made by the Board (not a delegate of the Corporation or the Board); and
- (b) must only be made after the Corporation has consulted the responsible Ministers and taken their views into account.

Division 7—Reporting to responsible Ministers

22 Quarterly reporting

The Corporation must provide a report on expanded drought loans to the responsible Ministers as at the end of every March, June, September and December, including information regarding:

- (a) the uptake of expanded drought loans; and
- (b) details of the portfolio of expanded drought loans; and
- (c) financial performance information.

Note: The Corporation also has the function of providing information about expanded drought loans to the responsible Ministers on request: see section 27.

Division 8—Funding of expanded drought loans

23 Funding of expanded drought loans

- (1) The Corporation will be funded to make expanded drought loans through an appropriation made by an Act.
- (2) Funds for expanded drought loans will be provided to the Corporation upon the Corporation's request to enable the Corporation to advance loan funds to recipients of those loans as required.
- (3) The Corporation must:
 - (a) only request funds as they are required to advance loan funds to recipients of expanded drought loans; and
 - (b) only use funds provided for expanded drought loans for that purpose.

Division 9—Other matters relating to program

24 Charging of transaction costs

For the purposes of subparagraph 8(5)(b)(i) of the Act, the Corporation may charge transaction costs incurred by the Corporation in relation to loans granted under the program.

25 Directions by responsible Ministers

- (1) For the purposes of subparagraph 8(5)(b)(iii) of the Act, the responsible Ministers may give written directions to the Corporation relating to the program.
- (2) The responsible Ministers must not give a direction in relation to a particular expanded drought loan.

Part 3—Other functions relating to program

Division 1—Corporation functions

26 Preparing and publishing guidelines relating to program

For the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of:

- (a) preparing, in consultation with the responsible Ministers, written guidelines about the program, including guidelines about the following:
 - (i) the types of security the Corporation will consider and require for expanded drought loans;
 - (ii) how the Corporation will determine whether persons are Australian citizens or permanent residents;
 - (iii) the right to request review of decisions to make or refuse expanded drought loans, and the process for requesting such reviews;
 - (iv) the kind of loans that the Corporation considers to be Commonwealth-funded concessional loans; and
- (b) publishing the guidelines.

27 Providing information and advice to responsible Ministers

For the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of:

- (a) providing information about expanded drought loans to the responsible Ministers on request; and
- (b) advising the Commonwealth on matters that will improve the operation and policy outcomes of expanded drought loans.

Division 2—Board functions

28 Ensuring internal review of decisions about loans

For the purposes of paragraph 15(1)(e) of the Act, the Board has the function of ensuring that the Corporation develops and applies procedures for reviewing decisions (the *original decisions*) to make or refuse expanded drought loans, that:

- (a) are transparent, robust and fair; and
- (b) require reviews to be carried out, and decisions to be made on reviews, by persons who were not the primary decision-makers of the original decisions; and
- (c) are consistent with principles of procedural fairness.

29 Setting interest rates

For the purposes of paragraph 15(1)(e) of the Act, the Board has the functions of:

- (a) agreeing with the responsible Ministers on a methodology for setting variable interest rates for expanded drought loans, that:
 - (i) is to result in rates that only cover the Corporation's administrative costs to deliver expanded drought loans and the Commonwealth's borrowing costs to fund the Corporation to make such loans; and
 - (ii) involves review of the interest rate for expanded drought loans each November and May, and, if necessary, revising it in line with changes of more than 0.1% in the Commonwealth 10-year bond rate; and
- (b) ensuring that the Corporation:
 - (i) applies any revised interest rate on the first day of the third month after the month in which the relevant review was conducted; and
 - (ii) notifies affected recipients of expanded drought loans in advance of any revision of the interest rate.

30 Developing and applying loan management policies and procedures

- (1) For the purposes of paragraph 15(1)(e) of the Act, the Board has the functions of:
 - (a) ensuring that the Corporation develops the policies and procedures described in subsection (2), having regard to the following matters:
 - (i) the concessional nature of expanded drought loans;
 - (ii) the effect on eligible farm businesses of taking action in accordance with those policies and procedures; and
 - (b) ensuring that the Corporation applies those policies and procedures, and takes those matters into account when doing so.
- (2) Subsection (1) applies to policies and procedures for managing expanded drought loans in a prudential manner to minimise the risk of default, including policies and procedures for the following:
 - (a) arrears management;
 - (b) recovery action;
 - (c) foreclosure arrangements;

Part 3 Other functions relating to program

Division 2 Board functions

Section 30

- (d) waiving debt after consulting the responsible Ministers;
- (e) writing off debt;
- (f) handling disputes and complaints.